IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6349 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAIDBIN MESON, SINCE DECEASED HIS HEIRS AND LEGAL REPRESENT.

Versus

STATE OF GUJARAT

Appearance:

MR MD RANA for Petitioners

MR N.D.GOHIL, AGP, for the respondents

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 03/03/2000

ORAL JUDGEMENT

The main grievance voiced in this petition under Article 226 of the Constitution of India is, that the respondent authority has not fixed the amount of pension on the basis of the last pay drawn in the pay scale of Rs.120-210 and, therefore, the authority should be

directed to revise the pension and also pay the resultant pensionary benefits. The original petitioner who, unfortunately, died during the pendency of the petition, on 20.1.96, and his heirs and legal representatives are brought on record, had retired as Police Sub-Inspector in the year 1960. He was in the pay scale of Rs.100-210 as per the service record produced on record of this petition.

The contention of the respondent is manifested in the affidavit in reply. In para 3, it has been stated that the petitioner was working, at the relevant point of time, in the pay scale of Rs.90-5-120-7-134-EB-8-155 in the former State of Saurashtra and was absorbed in the pay scale of Rs.120-5-190-EB-10-210 of the State of Bombay with effect from 1.11.1956. As per the option exercised and accepted by the original pensioner-petitioner, the petitioner himself had accepted the pay scale of Bombay with effect from 1.9.1959. This aspect is not disputed. The original petitioner had opted for that scale with effect from 1.9.59, pursuant to the letter of Director General of Police.

It is also borne out from the affidavit in reply that pension has been fixed in the pay scale which was opted by the original petitioner.

Learned Assistant Government Pleader Mr N.D.Gohil instructed by Mr Hasurkar, Solicitor of the State, upon written instructions has stated that pension had been fixed on the basis of the last pay drawn at Rs.210/- and not at Rs.155/-. It was, further, stated that the pension case of the original-petitioner was decided on the basis of last pay drawn, like that, Rs.210/- which was the maximum in the pay scale.

In view of the categorical statement made at the Bar on behalf of the respondent authority, upon written instructions, that fixation of pension is on the last pay drawn in the pay scale of Rs.120-210, which was opted by the original petitioner, there would not survive any controversy. Therefore, this petition is required to be rejected.

Learned advocate Mr Rana for the petitioner has raised the second contention that the subsequent pensionary benefits of minimum pension pursuant to the Government policy are not accorded to the petitioner till he died, on 20.1.96. In support of this contention, he has not been able to point out any Government Resolution, decision or any circular at present. In absence of any

specific enabling provision, it would not be possible to accept the second contention. However, it will be open for the petitioner on this count to make a representation to the competent authority for such benefits, if they are available and permissible for revision of the policy of the Government.

In the light of the aforesaid discussions, this petition is required to rejected, at this stage. Accordingly, this petition is rejected. Rule discharged with no order as to costs.

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(vjn)